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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

**SAN FRANCISCO DIVISION**

IN RE: UBER

TECHNOLOGIES, INC.,

PASSENGER SEXUAL

ASSAULT LITIGATION

Case No. 3:23-md-03084-CRB

**DEFENDANTS UBER TECHNOLOGIES,  
INC., RASIER, LLC, RASIER-CA, LLC'S  
AMENDED STATEMENT IN SUPPORT  
OF PLAINTIFFS' ADMINISTRATIVE  
MOTION TO CONSIDER WHETHER  
ANOTHER PARTY'S MATERIALS  
SHOULD BE SEALED [ECF No. 1811]  
AND RESPONSE TO ORDER TO SHOW  
CAUSE [ECF No. 1818]**

This Document Relates to:

ALL ACTIONS

Judge: Hon. Lisa J. Cisneros

Courtroom: G – 15th Floor

**DEFENDANTS’ AMENDED STATEMENT IN SUPPORT OF SEALING**  
**CONFIDENTIAL MATERIALS AND RESPONSE TO ORDER TO SHOW**  
**CAUSE**

Pursuant to Civil Local Rules 79-5(f)(3) and (c)(1) and the Protective Order entered in this case dated December 28, 2023, ECF 176 (“Protective Order”), Defendants Uber Technologies, Inc., Rasier, LLC, Rasier-CA, LLC (collectively “Uber”), respectfully submit this amended statement in support of Plaintiffs’ Administrative Motion to Consider Whether Another Party’s Material Should Be Filed Under Seal, dated October 30, 2024, ECF 1811 (“Plaintiffs’ Motion”) and response to the Court’s November 1, 2024 Order to Show Cause Why Request to Seal Should Not Be Denied, ECF 1818.

Uber’s initial statement in support of Plaintiffs’ Administrative Motion to Consider Whether Another Party’s Material Should Be Filed Under Seal was filed on October 31, 2024, one day after Plaintiffs’ administrative motion, pursuant to the Court’s September 3, 2024 Order, ECF 1559, pp. 3-4 (explaining that, for PTO 8 joint letter briefs, motions to seal are due at the time of filing (if the party seeking to seal is also the party filing the PTO 8 brief), and that responsive submissions in support of sealing (if the party seeking to seal is the non-filing party) are due 1 day after filing unless that party seeking to seal was notified of the inclusion of the confidential information or materials “too late ... to comply within one business day”).

**I. RESPONSE TO ORDER TO SHOW CAUSE**

Uber acknowledges the Court’s guidance in its November 1, 2024 Order to Show Cause Why Request to Seal Should Not Be Denied, ECF 1818. While Uber had a good faith basis to believe its requests were appropriate under the less restrictive “good cause” standard for sealing materials used in non-dispositive briefing, *see, e.g., Phillips ex rel. Ests. of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002), Uber does not contest the Court’s guidance and seeks to implement it in this amended

statement by withdrawing certain requests to seal documents in their entirety, proposing redactions in place of sealing certain documents in their entirety, and revising the scope of existing redactions.

Uber also notes that the Court's requirement that responsive filings in support of sealing be filed within one day (ECF 1559, pp. 3-4) is a significant obstacle to the type of narrow tailoring the Court requires. This is particularly true when edits to the brief and supporting declarations are routinely made on the day of filing, exhibits are often not identified four business days in advance (as PTO 8 contemplates), and different confidential information and documents are often identified for inclusion in a PTO 8 brief at different times (making it unclear whether the 1 day or 7 day deadline applies under the Court's guidance in its September 3 Order). Uber believes the 7 day deadline under Civil Local Rules 79-5(f)(3) for responding to an administrative motion to consider whether another party's material should be filed under seal would better allow sufficient time for parties to narrowly tailor their requests to seal.

## II. BACKGROUND AND REQUESTED SEALING

Plaintiffs' administrative motion concerns eight documents. Uber submits revised requests to seal or maintain redactions:

Document	Description	Uber's Revised Requests to Seal	Designating Party
Unredacted Joint Letter Brief on Privilege Disputes	References to documents marked Confidential	Proposes Revised Redactions	Uber
Unredacted Declaration of T. Ellis ISO Joint Letter Brief on Privilege Disputes	References to documents marked Confidential	Withdraws Request to Seal	Uber

Document	Description	Uber's Revised Requests to Seal	Designating Party
Ex. A to Ellis Declaration ISO Joint Discovery Letter	Document produced by Uber and marked Confidential	Maintains Request to Seal in Full	Uber
Ex. B to Ellis Declaration ISO Joint Discovery Letter	Chart created using privilege logs marked Confidential	Proposes Redactions and Withdraws Request to Seal in Full	Uber
Ex. C to Ellis Declaration ISO Joint Discovery Letter	Chart created using privilege logs marked Confidential	Withdraws Request to Seal	Uber
Declaration of S. Binnings ISO Joint Discovery Letter	Contains general descriptions of confidential and privileged documents and matters on which Uber sought and received legal advice	Maintains Request to Seal in Full	Uber
Declaration of D. Kolta ISO Joint Discovery Letter	Contains general descriptions of confidential and privileged documents and matters on which Uber sought and received legal advice	Maintains Request to Seal in Full	Uber
Declaration of M. Frangopoulos ISO Joint Discovery Letter	Contains general descriptions of confidential and privileged documents and matters on which Uber sought and received legal advice	Maintains Request to Seal in Full	Uber

These documents contain confidential, non-public and proprietary information, including a confidential, internal email discussing confidential plans for a business

1 initiative, email addresses of Uber employees and third parties, declarations describing  
2 privileged communications and the circumstances under which Uber sought and  
3 received legal advice, and an email subject line with descriptions of the specific matters  
4 on which Uber sought and received legal advice. Disclosure of such documents would  
5 harm Uber's competitive standing and violate the privacy rights of third parties. Uber  
6 therefore submits this amended statement requesting that the Court seal the documents  
7 under Local Rule 79-5(f)(3).

### 8 **III. LEGAL STANDARD**

9 Documents which do not relate directly to the merits of a case are properly sealed  
10 when a moving party makes "a particularized showing under the good cause standard  
11 of Rule 26(c)." *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180 (9th  
12 Cir. 2006) (internal quotations omitted); *Ctr. For Auto Safety v. Chrysler Group, LLC*,  
13 809 F.3d 1092, 1101-02 (9th Cir. 2016). Federal Rule of Civil Procedure 26(c) states  
14 that good cause may exist when issuing an order to seal is necessary to "protect a party  
15 or person from *annoyance*, embarrassment, oppression, or undue burden or expense."  
16 Fed. R. Civ. P. 26(c).

17 The documents here are related to a brief related to privilege disputes; they are  
18 not produced in relation to a dispositive motion. *See United States v. Selugh*, 896 F. 3d  
19 1007, 1015 (9<sup>th</sup> Cir. 2018); *Brown v. Google LLC*, No. 20-cv-03664-YGR (SVK), 2022  
20 WL 4227545, at \*1; *Adtrader, Inc. v. Google LLC*, No. 17-cv-07082-BLF 2020 WL  
21 6387381 at \*1 (N.D. Cal. Feb. 24, 2020). Therefore, the good cause standard applies.  
22 Discovery motion materials "are actually one step further removed in public concern  
23 from the trial process than the discovery materials themselves." *Selugh*, 896 F. 3d at  
24 1015. District Courts have discretion to balance the interests of private parties and  
25 public disclosure when deciding to seal documents. *Kamakana*, 447 F.3d at 1180.  
26 Importantly, there is little to no public interest in access to discovery materials. *See Ctr.*  
27 *for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (citing

1 *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33 (1984) (explaining that discovery is  
 2 largely “conducted in private as a matter of modern practice,” so the public is not  
 3 presumed to have a right of access to it); *Anderson v. Cryovac, Inc.*, 805 F.2d 1, 13 (1st  
 4 Cir.1986) (“There is no tradition of public access to discovery, and requiring a trial  
 5 court to scrutinize carefully public claims of access would be incongruous with the goals  
 6 of the discovery process.”)).

7 “Courts have found that ‘confidential business information’ in the form of ‘...  
 8 business strategies’ satisfies the ‘compelling reasons’ standard,” and thus, *a priori*,  
 9 meets the lower good cause standard. *Jam Cellars, Inc. v. Wine Grp. LLC*, No. 19-CV-  
 10 01878-HSG, 2020 WL 5576346, at \*1 (N.D. Cal. Sept. 17, 2020). “Courts in this circuit  
 11 routinely seal email addresses and other personal identifying information under the  
 12 compelling reasons standard due to the potential privacy harm to the individual whose  
 13 contact information may be exposed.” *Jones v. PGA Tour, Inc.*, No. 22-CV-04486-  
 14 BLF, 2023 WL 7434197, at \*2 (N.D. Cal. Oct. 5, 2023); *see also In re Pac. Fertility*  
 15 *Ctr. Litig.*, No. 18-CV-01586-JSC, 2021 WL 1082843, at \*2 (N.D. Cal. Mar. 12, 2021)  
 16 (noting that “there are compelling reasons to seal customer names, ... as well as  
 17 employee email addresses”). Information on privilege logs can also be sealed under the  
 18 “good cause” standard to the extent they “reflect the identity of documents and  
 19 communications withheld ... from production on privilege grounds.” *Fernandez v.*  
 20 *CoreLogic Credco, LLC*, No. 20-CV-1262-JM-AGS, 2023 WL 11445613, at \*1 (S.D.  
 21 Cal. Mar. 8, 2023).

#### 22 **IV. UBER’S MATERIAL SHOULD BE KEPT UNDER SEAL**

23 The documents at issue should be sealed under the good cause standard. These  
 24 documents contain confidential, non-public and proprietary information, including  
 25 descriptions of non-public, a confidential business plan, declarations describing  
 26 privileged communications and the circumstances under which Uber sought and  
 27 received legal advice, email addresses of Uber employees and third parties, and an email



1 subject line with descriptions of the specific matters on which Uber sought and received  
 2 legal advice. *See* Cummings Decl. ¶¶ 2-8. Uber has a legitimate interest in sealing the  
 3 documents. There are no less restrictive alternatives to redacting or sealing these  
 4 documents.

5 **A. FAILING TO SEAL THE DOCUMENTS WOULD HARM UBER**

6 The documents at issue contain confidential, non-public and proprietary  
 7 information, including a confidential, internal email discussing confidential plans for a  
 8 business initiative, email addresses of Uber employees and third parties, declarations  
 9 describing privileged communications and the circumstances under which Uber sought  
 10 and received legal advice, and an email subject line with descriptions of the specific  
 11 matters on which Uber sought and received legal advice. Disclosure of such documents  
 12 would harm Uber’s competitive standing and violate the privacy rights of third parties.  
 13 *See* Cummings Decl. ¶¶ 2-8.

14 **Unredacted Joint Letter Brief re: Privilege Disputes:** The amended redactions  
 15 in the letter brief contain email addresses for two third parties, and one email subject  
 16 line with descriptions of the specific matters on which Uber was engaged in confidential  
 17 communications with a regulator and on which it sought and received legal advice. *See*  
 18 *Jones*, 2023 WL 7434197, at \*2 (“Courts in this circuit routinely seal email addresses  
 19 and other personal identifying information under the compelling reasons standard due  
 20 to the potential privacy harm to the individual whose contact information may be  
 21 exposed.”); *In re Pac. Fertility Ctr. Litig.*, 2021 WL 1082843, at \*2 (noting that “there  
 22 are compelling reasons to seal customer names, ... as well as employee email  
 23 addresses”); *Fernandez v. CoreLogic Credco, LLC*, No. 20-CV-1262-JM-AGS, 2023  
 24 WL 11445613, at \*1 (S.D. Cal. Mar. 8, 2023) (finding good cause to seal privilege logs  
 25 that “reflect[ed] the identity of documents and communications withheld ... from  
 26 production on privilege grounds”). Disclosure of this document could harm Uber by  
 27

1 revealing the matters on which it engaged in confidential communications with  
2 regulators and sought legal advice about the same.

3 **Ex. A to Ellis Declaration:** This is a confidential, non-public, internal Uber  
4 email produced in discovery. The email discusses a confidential business proposal and  
5 detailed strategies, work streams, and business considerations regarding the same. *See*  
6 *Jam Cellars*, 2020 WL 5576346, at \*1 (“Courts have found that ‘confidential business  
7 information’ in the form of ‘... business strategies’ satisfies the ‘compelling reasons’  
8 standard.”); *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d at 1097. Disclosure  
9 of this document could harm Uber competitively by revealing its internal business  
10 strategies, plans, and processes.

11 **Ex. B to Ellis Declaration:** This is a chart created from confidential privilege  
12 log(s) provided by Uber. The amended redactions in this chart contain employee and  
13 third party email addresses one email subject line with descriptions of the specific  
14 matters on which Uber was engaged in confidential communications with a regulator  
15 and on which it sought and received legal advice. *See Fernandez v. CoreLogic Credco,*  
16 *LLC*, No. 20-CV-1262-JM-AGS, 2023 WL 11445613, at \*1 (S.D. Cal. Mar. 8, 2023)  
17 (finding good cause to seal privilege logs that “reflect[ed] the identity of documents and  
18 communications withheld ... from production on privilege grounds”); *Jones*, 2023 WL  
19 7434197, at \*2 (“Courts in this circuit routinely seal email addresses and other personal  
20 identifying information under the compelling reasons standard due to the potential  
21 privacy harm to the individual whose contact information may be exposed.”); *In re Pac.*  
22 *Fertility Ctr. Litig.*, 2021 WL 1082843, at \*2 (noting that “there are compelling reasons  
23 to seal customer names, ... as well as employee email addresses”).

24 **Declaration of Scott Binnings:** This declaration contains descriptions of  
25 confidential and privileged documents and the business practices, plans, or  
26 communications described therein, names of Uber employees and attorneys, and  
27 descriptions of the matters on which Uber sought and received legal advice. The  
28



1 declaration also contains descriptions of the manner in which Uber structures its teams  
2 and operations to seek legal advice from its in-house attorneys, as well as Uber's  
3 practices and procedures through which it seeks and receives legal advice. It also  
4 describes which particular individuals and attorneys had involvement in various  
5 projects and initiatives. Disclosure of this confidential internal information may cause  
6 Uber competitive harm and also risks chilling Uber's ability to seek and obtain legal  
7 advice if the subjects, context, and manner of seeking and receiving legal advice is  
8 publicly disclosed.

9 **Declaration of Daniel Kolta:** This declaration contains descriptions of  
10 confidential and privileged documents and the business practices, plans, or  
11 communications described therein, and descriptions of the matters on which Uber  
12 sought and received legal advice. The declaration also contains descriptions of the  
13 manner in which Uber structures its teams and operations to seek legal advice from its  
14 in-house attorneys, as well as Uber's practices and procedures through which it seeks  
15 and receives legal advice. Disclosure of this confidential internal information may cause  
16 Uber competitive harm and also risks chilling Uber's ability to seek and obtain legal  
17 advice if the subjects, context, and manner of seeking and receiving legal advice is  
18 publicly disclosed.

19 **Declaration of Maureen Frangopoulos:** This declaration contains descriptions  
20 of confidential and privileged documents and the business practices, plans, or  
21 communications described therein, the name and role of another Uber attorney and her  
22 involvement with a privileged document, and descriptions of the matters on which Uber  
23 sought and received legal advice. It describes the relationship of Uber's legal  
24 department with a third party. The declaration also contains descriptions of the manner  
25 in which Uber structures its teams and operations to seek legal advice from its in-house  
26 attorneys, as well as Uber's practices and procedures through which it seeks and  
27 receives legal advice. Disclosure of this confidential internal information may cause  
28

1 Uber has substantially revised the scope of its request to seal, substantially narrowing  
2 the scope of redactions and withdrawing its request to seal several documents

3 **B. LESS RESTRICTIVE ALTERNATIVE TO SEALING IS**  
4 **INSUFFICIENT TO PREVENT HARM**

5 Uber has substantially revised the scope of its request to seal, substantially  
6 narrowing the scope of redactions and withdrawing its request to seal several  
7 documents. In light of this substantial narrow tailoring, no less restrictive alternative to  
8 sealing is sufficient. See Cummings Decl. ¶¶ 2-9. Actions short of sealing the  
9 documents would not protect the legitimate interests of Uber, its employees, or third  
10 parties.

11 **V. CONCLUSION**

12 For the foregoing reasons, Uber respectfully requests that the Court order that the  
13 documents listed above be maintained under seal.

1 DATED: November 8, 2024

**SHOOK, HARDY & BACON L.L.P.**

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